

**MEMORANDUM OF AGREEMENT
BETWEEN THE U.S. FISH & WILDLIFE SERVICE
AND THE
HAWAII STATE HISTORIC PRESERVATION OFFICER
REGARDING THE
SALVAGE AND DISMANTLING OF THREE
COMMERCIAL PACIFIC CABLE COMPANY BUILDINGS
ON THE
MIDWAY ATOLL NATIONAL WILDLIFE REFUGE
NORTHWESTERN HAWAIIAN ISLANDS, U.S. MINOR ISLANDS**

WHEREAS, the U.S. Fish and Wildlife Service (USFWS) has determined, in consultation with the Hawaii State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (Council), that the Commercial Pacific Cable Company compound (Cable Station) on the Midway Atoll National Wildlife Refuge (NWR), U.S. Minor Islands are eligible for inclusion in the National Register of Historic Places under Criteria A, C, and D (historic property);

WHEREAS, the Cable Station compound has been reviewed several times and plans have been created for their stabilization and reuse, however, three of the buildings (619, 623, 628) have deteriorated rapidly in the past several years, reaching the point where they are a safety hazard and restoration is impossible;

WHEREAS, the safety hazard will be managed by removing the steel rafters, wood plank roofing material, and concrete verandahs. Dismantling the three buildings will adversely affect the integrity of the historic property (Undertaking), but the method used will be sensitive to leaving as much of the original fabric (concrete walls and floors) to allow a representation of the buildings to remain, there is no feasible or prudent alternative to the Undertaking;

WHEREAS, the Cable Station compound will be partially dismantled, one building (643), the Mess Hall, will be preserved and rehabilitated as an example of the unique architecture while the remaining buildings will be retained to provide spatial continuity of the compound such that the compound will still meet Criteria A and D;

WHEREAS, the USFWS has consulted with interested parties including the Historic Hawaii Foundation (HHF);

WHEREAS, the USFWS has notified the Advisory Council on Historic Preservation (Council) of the adverse effect pursuant to 36 CFR 800, regulations effective August 8, 2004, implementing Section 106 of the National Historic Preservation Act, as amended, 16 U.S.C. 470f (NHPA), and;

NOW, THEREFORE, the USFWS and the SHPO agree that if the Undertaking proceeds, the Undertaking shall be implemented in accordance with the following stipulations in order to take

into account the effects of the Undertaking on a historic property and to satisfy the requirements of Sections 106 and 110(b) of the NHPA, and further agree that these stipulations shall govern the Undertaking and all of its parts until this Memorandum of Agreement (MOA) expires or is terminated.

STIPULATIONS

The USFWS shall ensure that the following stipulations are implemented:

I. Mitigation of Project Effects to Historic Properties

The USFWS has consulted with the SHPO and has developed ~~an~~ a mitigation plan that is in keeping with the *Secretary of the Interior's Standards for the Treatment of Historic Properties* and includes the following elements:

A. Recordation of Historic Properties

Photodocumentation of the Cable Station has been accomplished over the years and is recorded to Historic American Buildings Survey standards. Original plans have been copied and alterations to the floor plans have been documented.

All of the documentation developed for the Cable Station will be compiled into one volume as a Historic Structures Report. Copies of the report will be reproduced and submitted to the SHPO for review. Final copies of the report will be maintained at the Midway Atoll NWR refuge office, the FWS Region 1/8, Cultural Resources Team office, the SHPO office, and will be available on the FWS Website.

B. Salvage of Materials

Prior to dismantling the roofs and verandahs the USFWS will salvage the windows, doors, and other elements which can be used to restore deteriorated or missing elements on the Mess Hall. The windows and doors and other elements will be securely stored in the Mess Hall building and re-used on the Mess Hall to replace non-original windows and doors and to repair deteriorated elements.

C. Enhanced Interpretation

The USFWS will continue to work to stabilize the Mess Hall using the salvaged materials and will maintain the footprint of each of the buildings to provide a safe, yet evocative setting for interpreting the Cable Station era on Midway.

II. Administrative Provisions

A. Resolving Objections

1. Should the SHPO object to the manner in which the terms of this MOA are implemented, to any action carried out or proposed with respect to implementation of the MOA, or to any documentation prepared in accordance with and subject to the terms of this MOA, the USFWS shall immediately consult with the SHPO for no more than 30

days to resolve the objection. If the objection is resolved through such consultation, the action subject to dispute may proceed in accordance with the terms of that resolution. If, after initiating such consultation, the USFWS determines that the objection cannot be resolved through consultation, the USFWS shall forward all documentation relevant to the objection to the Council, including the USFWS's proposed response to the objection, with the expectation that the Council will within 45 days after receipt of such documentation:

- a. Advise the USFWS that the Council concurs in the USFWS's proposed response to the objection, whereupon the USFWS will respond to the objection accordingly; or
- b. Provide the USFWS with recommendations, which the USFWS will take into account in reaching a final decision regarding its response to the objection; or
- c. Notify the USFWS that the objection will be referred for comment pursuant to 36 CFR 800.7, and proceed to refer the objection and comment. The USFWS shall take the resulting comment into account in accordance with 36 CFR 800.7(c)(4) and Section 110 (1) of the NHPA.

2. Should the Council not exercise one of the above options within 45 days after receipt of all pertinent documentation, the USFWS may assume the Council's concurrence in its proposed response to the objection.

3. The USFWS shall take into account any Council recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection. The USFWS's responsibility to carry out all actions under this MOA that are not the subjects of the objection will remain unchanged.

4. At any time during implementation of the measures stipulated in this MOA should an objection pertaining to such implementation be raised by a member of the public, the USFWS shall notify the SHPO and take the objection into account, consulting with the objector and, should the objector so request, with the SHPO to address the objection. The time frame for such consultation shall be reasonably determined by the USFWS.

5. The USFWS shall provide to the SHPO, the Council when Council comments have been issued hereunder, and any parties that have objected pursuant to paragraph A.4., above, with a copy of its final written decision regarding any objection addressed pursuant to this stipulation.

6. The USFWS may authorize any action subject to objection under this stipulation to proceed after the objection has been resolved in accordance with the terms of this stipulation.

B. Amendments

Either signatory may propose that this MOA be amended, whereupon the signatories will consult for no more than 30 days to consider such amendment. The amendment process shall comply with 36 CFR 800.6(c)(1) and 800.6(c)(7). This MOA may be amended only upon the written agreement of the signatories. If it is not amended, this MOA may be terminated by either signatory in accordance with Stipulation C., below.

C. Termination

1. If this MOA is not amended as provided for in paragraph B. of this stipulation, or if either signatory proposes termination of this MOA for other reasons, the signatory proposing termination shall in writing notify the other signatory, explain the reasons for proposing termination, and consult with the other signatory for at least 30 days to seek alternatives to termination. Should such consultation result in an agreement on an alternative to termination, then, the signatories shall proceed in accordance with the terms of that agreement.

2. Should such consultation fail, the signatory proposing termination may terminate this MOA by promptly notifying the other signatory in writing. Termination hereunder shall render this MOA null and void. If this MOA is terminated hereunder and if the USFWS determines that the Undertaking will nonetheless proceed, then the USFWS shall either consult in accordance with 36 CFR 800.6 to develop a new MOA or request the comments of the Council pursuant to 36 CFR Part 800.

D. Duration of the MOA

Unless terminated pursuant to paragraph C. of this MOA, or unless it is superseded by an amended MOA, this MOA will be in effect until the USFWS, in consultation with the SHPO, determines that all of its stipulations have been satisfactorily fulfilled. Upon a determination by USFWS that all of the terms of this MOA have been satisfactorily fulfilled, this MOA will terminate and have no further force or effect. The USFWS will promptly provide the SHPO with written notice of its determination and of the termination of the MOA. Following provision of such notice, this MOA will be null and void.

E. Effective Date

This MOA will take effect when it has been executed by both the USFWS and the SHPO.

Execution of this MOA by the USFWS and the SHPO, its transmittal by the USFWS to the Council in accordance with 36 CFR 800.6(b)(1)(iv) and subsequent implementation of its terms, shall evidence pursuant to 36 CFR 800.6(c), that this MOA is an agreement with the Council for purposes of Section 110(1) of the NHPA, and shall further evidence that the USFWS has afforded the Council an opportunity to comment on the Undertaking and its effects on historic properties, and that the USFWS has taken into account the effects of the Undertaking on historic properties.

FISH and WILDLIFE SERVICE

By: Cecilynn L. Bohan
Regional Chief, National Wildlife Refuge System

Date: 6/4/09

HAWAII STATE HISTORIC PRESERVATION OFFICER

By: [Signature]
State Historic Preservation Officer, Hawaii

Date: 5/13/09

COMMERCIAL PACIFIC CABLE STATION

